

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY MAY 20, 2009

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 653

Introduced by Assembly Member Feuer

February 25, 2009

~~An act to add Article 5.5 (commencing with Section 988) to Chapter 4 of Division 8 of the Evidence Code, relating to evidence. An act to add Section 3303.1 to the Government Code, relating to peace officers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 653, as amended, Feuer. ~~Evidence~~: *Peace officers*: marital privilege.

Existing law provides that a spouse has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if the spouse claims the privilege and the communication was made in confidence between the spouses while they were husband and wife. A married person also has a privilege not to testify against his or her spouse in any proceeding and, when the spouse is a party to a proceeding, a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege. *The Public Safety Officers Procedural Bill of Rights Act provides various rights and protections to peace officers, including the procedure for interrogation of peace officers who are under investigation.*

This bill would provide that a peace officer who asserts any of the marital privileges described above shall not be subject to administrative discipline for failure to report information to his or her supervisor or department, except when the information concerns criminal or certain other conduct of the peace officer's spouse, who is also a peace officer employed by the department, and other specified conditions apply. *The bill would provide that provision would only apply to administrative disciplinary investigations and hearings, not to other civil or criminal proceedings.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 time-honored privilege not to testify against one's spouse is
3 grounded on the premise that compelled testimony of a spouse
4 would, in many cases, seriously disturb if not completely disrupt
5 the marital relationship (People v. Sinohui (2002) 28 Cal.4th 205).
6 As the California Law Revision Commission has commented with
7 respect to Section 970 of the Evidence Code, society generally
8 stands to lose more as the result of that disruption than it stands
9 to gain from the testimony that would be available if the privilege
10 did not exist.

11 (b) It is the intent of the Legislature ~~that this act shall apply only~~
12 ~~to administrative disciplinary investigations and hearings, and not~~
13 ~~to other civil or criminal proceedings. It is the further intent of the~~
14 ~~Legislature to overrule Riverside County Sheriff's Dept. v. Zigman~~
15 ~~(2008) 169 Cal.App.4th 763 to the extent that it is inconsistent~~
16 ~~with this act.~~

17 ~~SEC. 2. Article 5.5 (commencing with Section 988) is added~~
18 ~~to Chapter 4 of Division 8 of the Evidence Code, to read:~~

19
20 ~~Article 5.5. Marital Privilege in Peace Officer Administrative~~
21 ~~Disciplinary Investigations and Hearings~~
22

23 ~~988.—~~

24 ~~SEC. 2. Section 3303.1 is added to the Government Code, to~~
25 ~~read:~~

1 3303.1. (a) A peace officer who asserts the privilege of a
2 spouse under Section 970, 971, or 980 of the *Evidence Code* to
3 refuse to testify or be called as a witness against his or her spouse,
4 or to disclose confidential marital communications, shall not be
5 subject to administrative discipline for failure to report information
6 to his or her supervisor or department, except when all of the
7 following are true:

8 (1) The information concerns conduct of the peace officer's
9 spouse, who is also a peace officer employed by the same
10 department, that is criminal or a serious violation of department
11 policy punishable by a suspension of 15 days or more, or subjects
12 the department to a specific and significant risk of civil liability.

13 (2) The interests of justice require disclosure of the information
14 because, after exercising reasonable diligence, independent
15 evidence does not otherwise appear to be reasonably available to
16 proceed with an administrative disciplinary investigation or
17 hearing.

18 (3) The sheriff or chief of police personally approves the
19 discipline in writing despite the assertion of the marital privilege.

20 (b) This section does not apply if the peace officer is a percipient
21 witness to the misconduct at issue.

22 (c) *This section shall only apply to administrative disciplinary*
23 *investigations and hearings, not to other civil or criminal*
24 *proceedings.*

25 ~~(e)~~

26 (d) Nothing in this section shall impair any right or privilege
27 pursuant to a memorandum of understanding between a department
28 and a certified bargaining unit representing peace officers, or limit
29 their ability to negotiate and agree to a higher standard of rights
30 or privileges.